

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
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4 THOMAS TURNER, an individual,)
5 on behalf)
6 of himself and others similarly) Civil Action
7 situated,)
8) No. 20-11530-FDS
9 Plaintiff)
10)
11)
12 vs.)

13 LIBERTY MUTUAL RETIREMENT
14 BENEFIT PLAN,
15 Defendant
16

17 BEFORE: CHIEF JUDGE F. DENNIS SAYLOR, IV
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19

20 TELEPHONIC SCHEDULING CONFERENCE
21
22

23 John Joseph Moakley United States Courthouse
24 1 Courthouse Way
25 Boston, MA 02210

July 22, 2021
2:45 p.m.

Valerie A. O'Hara, FCRR, RPR
Official Court Reporter
John Joseph Moakley United States Courthouse
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Boston, MA 02210
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THE CLERK: Court is now in session in the matter of Turner vs. Liberty Mutual Retirement Benefit Plan, Civil Action Number 20-11530.

Would counsel please identify themselves for the record, starting with the plaintiff.

THE COURT: Good morning.

MS. BALL: That's okay, Sarah Ball for the plaintiff.

THE COURT: Good afternoon. All right.

THE COURT: Good afternoon.

THE COURT: Good afternoon. This is the

1 scheduling conference in this case. I'm obviously
2 familiar with it, and I reviewed the parties' competing
3 proposals, and I am persuaded that what makes sense is
4 to conduct discovery on what plan was in place at the
5 relevant time period. There may be some subsidiary
6 questions in that.

7 Plaintiffs say or suggest, anyway, that the
8 plan documents may not have been enacted by the board
9 and express no opinion on that, but I think taking the
03:02PM 10 question somewhat broadly, which plan was in place
11 during the relevant times is something that we ought to
12 limit the first phase of discovery to because I think it
13 is dispositive, and issues such as plan interpretation,
14 once we've determined what plan does apply and how that
15 plan is determined does follow.

16 Obviously, ERISA plans do need to be in
17 writing, and if there remain factual issues beyond that
18 point and I have not resolved the case in favor of
19 defendants, we will open up discovery to the remaining
03:02PM 20 claims.

21 So, I do take the point that whenever you phase
22 discovery, there tends to be squabbling about that
23 discovery, which I would hope to discourage. One
24 problem with attempting to formalize that is you wind
25 up, you know, with people fighting about whether

1 something is properly within Phase I or not, and, you
2 know, sometimes consuming pages of deposition testimony
3 over some relatively minor point, so I don't want this
4 to be played out that way.

5 I do think that discovery in this phase ought
6 to be limited to what is the plan that was in place at
7 the relevant time in preparation for briefing about
8 which plan is in place and what does it say, what does
9 it mean.

03:03PM 10 I will permit some penumbra around that, you
11 know, for additional discovery, but I think that's
12 basically the idea here, and I'm going to adopt
13 defendant's proposed timetable for conducting that,
14 which is that written discovery requests for discovery
15 shall be served.

16 The parties have proposed August 1st, which may
17 be a little fast given where we are. I'm going to
18 extend that somewhat, and August 1st is a Sunday. I'm
19 going to make that August -- actually, I'm going to make
03:04PM 20 that August 20th, and then depositions, fact discovery
21 on this issue shall be completed October 29th.

22 Any renewed motions for summary judgment on
23 this topic shall be filed by they proposed
24 November 24th, which is the Wednesday before
25 Thanksgiving. I think I'm going to save you all from

1 yourself and move that back to November 22nd. Any
2 oppositions shall be filed by December 20th, and any
3 reply memorandum by January 6th, and I will set it for
4 argument on what I expect will be summary judgment
5 motions for 2:30 on Thursday, January 13th, and I will
6 not issue a separate scheduling order on that, but we'll
7 put that in the clerk notes.

8 I don't know if we need a status conference
9 between now and then, but in the interests of making
03:06PM 10 sure we stay on track, I'm going to schedule one. So I
11 will want to check in Tuesday, October 12th at 12:00
12 noon eastern time by telephone.

13 All right. Let me pause there. Any questions,
14 requests for clarifications, anything of that sort for
15 the plaintiff?

16 MR. TOMASEVIC: Yes, very briefly, your Honor,
17 and, again, this is Alex Tomasevic for the plaintiff.
18 So, the question of what was the plan, when was it
19 enacted, and when was it properly enacted, at most, only
03:07PM 20 speaks to the first cause of action for plan
21 interpretation under (a) (1) (B).

22 Am I to understand then in essence or another
23 way to interpret the plan that you're laying out for us
24 is that discovery on the other causes of action or
25 Counts 2, 3, 4, this is essentially deferred?

1 THE COURT: Yes, that is the plan.

2 MR. TOMASEVIC: Okay.

3 THE COURT: Again, the devil may be in the
4 details, and I will say this. I'm also a fan of
5 efficiency. One of the reasons I normally don't like
6 bifurcating or trifurcating or quadrifating things is
7 sometimes you have, for example, deponents, you know,
8 being called back again and again.

9 I would expect that a question, as I say,
03:08PM 10 that's maybe on the border of this issue or, you know,
11 within the penumbra if it's something simple and you're
12 all gathered anyway would be permissible.

13 Again, I don't want to draw too strict a line
14 because of that. I don't want someone, you know, flying
15 across the country, for example, you know, for an
16 additional 10 minutes of questioning that could have
17 been handled the first time around, but that's an
18 abstract comment, okay.

19 The point remains that I am persuaded that
03:08PM 20 discovery should be so limited in the first phase and
21 that discovery on other issues should be deferred.

22 MR. TOMASEVIC: I understand, your Honor,
23 thank you.

24 THE COURT: For the defendants?

25 MR. TISHYEVICH: Understood, your Honor, and no

1 questions here.

2 THE COURT: Okay. All right. So let's see how
3 this goes then, and barring further developments, we
4 will regroup on October 12th and see where we are.
5 Okay?

6 MR. TOMASEVIC: Thank you for your time, your
7 Honor.

8 MR. TISHYEVICH: Thank you, your Honor.

9 (Whereupon, the hearing was adjourned at
10 3:08 p.m.)

11 C E R T I F I C A T E

12 UNITED STATES DISTRICT COURT)
13 DISTRICT OF MASSACHUSETTS) ss.
14 CITY OF BOSTON)

15 I do hereby certify that the foregoing
16 transcript, Pages 1 through 8 inclusive, was recorded by me
17 stenographically at the time and place aforesaid in Civil
18 Action No. 20-11530-FDS, THOMAS TURNER, an individual, on
19 behalf of himself and others similarly situated, vs.
20 LIBERTY MUTUAL RETIREMENT PLAN and thereafter by me reduced
21 to typewriting and is a true and accurate record of the
22 proceedings.

23 Dated October 18, 2021.

24 s/s Valerie A. O'Hara

25

VALERIE A. O'HARA
OFFICIAL COURT REPORTER